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REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

Letter dated 13 September 1993 from the Permanent Representative of Sierra Leone to the United Nations addressed to the Secretary-General

I have the honour to transmit the attached proposal entitled "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes", which is being submitted by the delegation of Sierra Leone for consideration by the General Assembly during its forty-eighth regular session (see annex).

I should be grateful if you could have the text of the present letter and its annex circulated as an official document of the General Assembly under item 148 of the provisional agenda.

(Signed) Abdul G. KOROMA
Ambassador
Permanent Representative

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ANNEX

Establishment of a Dispute Settlement Service offering or responding with its services early in disputes: proposal submitted by Sierra Leone

I. INTRODUCTION

The early offering of non-imposed dispute settlement services is provided both for preventing conflicts and enhancing dispute settlement through the establishment of a permanent mechanism, subject to restraint by the Security Council and involving the Secretary-General. It will function without disturbing the existing constitutional balance among the organs.

The services can be offered directly by the five Service Administrators, elected on a regional basis, under clearly defined conditions and strict confidentiality. The offer of the services can be requested by the Security Council. Also, subject to certain conditions, the services can be provided on request by all parties to a dispute, the General Assembly, or if recommended by the Secretary-General.

If any of the disputing parties rejects the services, the process will be terminated. A later offering of services can be made to the parties at a more favourable time.

If the services are accepted, the parties will choose any number of settlors a/ from a roster of qualified persons previously proposed by Member States.

The parties will establish the rules for any ensuing dispute settlement session. Similarly, matters relating to the timing and nature of reports would be agreed upon by the parties and the settlors. No doubt, starting the process itself would be considered a major accomplishment.

The administrative structure of the Service, its formation and function, the source of secretarial staff and the availability of early warning resources are outlined in the detailed proposal.

Following the text of the present proposal, an explanatory note is given in section III, which describes the advantages of the Service at length.

II. PROPOSAL

1. The Dispute Settlement Service shall be implemented through a board of five Administrators, with five alternates, elected by the Sixth Committee and confirmed by the General Assembly, on the basis of equitable geographical distribution, for a term of three years. The Administrators shall be eligible for re-election.

2. The Secretary-General, or his representative, shall have a seat on the Board of Administrators, but without the right to vote. In this capacity, the Secretary-General or his representative, will place his expertise at the disposal of the Board, and in order to avoid conflict, will keep the Board informed of the existence of such matters as referred to in Article 12, paragraph 2, of the Charter of the United Nations.

3. The Chairman of the Board of Administrators shall be chosen by the Administrators.

4. The Board of Administrators shall be located in New York. Secretarial services for the Board shall be provided by the Secretariat, bearing in mind the nature of the Board. b/

5. The Dispute Settlement Service may be activated directly by a simple majority of the Board of Administrators in their offering of services early in disputes, subject to paragraphs 6 and 7, unless opposed by the Administrator from the region in which the disputing parties are involved.

6. The activities of the Service cannot be invoked to prevent the Security Council from exercising its powers under the Charter in any dispute or situation likely to endanger international peace and security.

7. The offering of services by the Dispute Settlement Service may be prevented by the Security Council under Article 27, paragraph 2, of the Charter.

8. The Service may be activated by a decision of the Security Council. It may also be activated at the request of the General Assembly, as well as on the recommendation of the Secretary-General, subject to paragraphs 6 and 7.

9. If any of the parties to the dispute rejects the initial offer of services, or does so at a later stage, the procedure is terminated. A rejection would not prevent a later attempt to offer services at a more favourable time.

10. The Service may be activated at the request of all parties to a given dispute, subject to paragraphs 6 and 7.

11. No offer of services shall be made to parties in dispute if a preceding effort to settle such a dispute is already being implemented by an activity established for that purpose, unless the parties request aid from or transfer responsibility to the Service.

12. After a decision is made to activate the Service, the Chairman, or other designated Administrator, shall contact the parties in the offer of services under strict confidentiality. If the parties so desire, no party shall be identified as accepting or rejecting the services, except in confidence to the other Administrators, the Secretary-General, in accordance with paragraph 2, or by the request of the Security Council.

13. After a rejection of the initial offer of services or the later abandoning of the process by any party at a later stage, the Chairman shall issue a report that the services cannot be implemented due to unfavourable conditions at the time. Only the Security Council, for its own confidential information

concerning the rejection, and likewise the Secretary-General, for his own function of offering services independent of this Service, shall receive any supplementary information on request.

14. If the offer of services is accepted by all parties to the dispute, the parties will select an agreed number of settlors from the Roster of Settlors.

15. The Roster of Settlors shall be composed of qualified individuals willing to serve in dispute settlement nominated by Member States. No more than three settlors may be nominated by each Member State. Nothing in this Service shall disqualify any of the Administrators or the Secretary-General from acting in the capacity of a settlor if so desired by the disputing parties.

16. The Roster of Settlors shall be maintained and updated by the Office of Legal Affairs and shall be made available to all Member States and any disputing parties.

17. After accepting the services, the parties shall bear all costs of subsequent dispute settlement sessions. c/

18. Operating procedures, including venue, number, and timing of sessions, shall be established by the parties to the dispute and the settlors. Any interim report or that of the final dispute decision shall be released to the Board of Administrators by the settlors, as determined by the parties. Any other procedural regulations inconsistent with this mandate of the Service shall not apply.

19. The Board of Administrators shall make an annual report to the General Assembly on the activities of the Service.

20. The Secretary-General maintains his option of offering his good offices in the settlement of disputes independent of his role in the operation of this Service. Also, all other options using existing United Nations machinery and procedures intended for enhancing the peaceful settlement of disputes remain available independent of this Service.

21. For purposes of early warning, the Administrators are encouraged to draw upon the resources of the Secretariat and their respective regions regarding new and potential disputes in which this Service may be crucial.

22. In order to encourage the use of this Service, the Secretariat shall disseminate information regarding it to all Member States and on as wide a geographical basis as possible.

III. EXPLANATORY NOTE

The Dispute Settlement Service that is being proposed will have the following advantages. It will:

(a) Provide an option for the Security Council and the Secretary-General in their commitment to the maintenance of international peace and security, without threatening the existing constitutional balance of the organs;

(b) Make for a desirable General Assembly influence in the peaceful settlement of disputes, thus contributing to the maintenance of international peace and security;

(c) Strengthen the recourse of parties to a dispute to a regional solution by providing Administrators and a Roster of Settlors which will contain eminent personalities from their respective regions;

(d) Provide a self-triggering mechanism which will utilize an available Roster of Settlors. Such a mechanism repairs the deficiency existing in the register on fact-finding, which was established by General Assembly resolution 2329 (XXII) and which became moribund;

(e) Involve the Secretary-General as a member of the Board of Administrators where his advice assures maintaining the constitutional balance of the main organs of the Organization and his availability to serve in the capacity of a settlor at a critical period in the dispute settlement sessions if desired by the parties;

(f) Utilize a Board of Administrators primarily for the offering of services to the disputing parties or for responses to requests for the services; but it is the chosen settlors who represent the primary mechanism for the dispute settlement process;

(g) Expand the scope of expertise available to disputing parties by using settlors who will be drawn from as varied a field of qualified personalities as possible to be engaged actively in measures of a peacemaking nature;

(h) Allow the choice of dispute settlement options provided by Article 33, paragraph 1, of the Charter in any appropriate relation or sequence after the parties have accepted the services, chosen their settlors and considered with the latter directions and planning of their subsequent action, including the currently proposed United Nations rules for the conciliation of disputes between States;

(i) Make use of the Secretariat as the pool for secretarial services, as well as the repository of the Roster of Settlors and the wide dissemination of the same;

(j) Anticipate a relatively low financial cost of operation by being associated with an existing organ of the Organization and by having the Board of Administrators located in New York and requiring parties accepting the services to bear the cost of the subsequent dispute settlement process (see footnote c/ to paragraph 17 of the proposal);

(k) Enhance the growing interest and emphasis on regional approaches within the Organization;

(l) Encourage the use of early warning of disputes so as to minimize their deterioration;

(m) Utilize the offering to disputing parties of non-imposed services which, at their wish, may include a desired binding settlement which could be recorded by the United Nations;

(n) Introduce a flexibility of approach in the manner in which the Service will function in relation to the organs of the Organization as well as to disputing parties;

(o) Strengthen the United Nations system by helping to move some of its dispute settlement options from an ad hoc arrangement to that of a permanent mechanism;

(p) Keep peacemaking as proposed clearly in its basic tradition, the peaceful settlement of disputes, as foreseen in Chapter VI of the Charter of the United Nations, in contrast to peace enforcement, which is perceived as a projection of provisional measures as defined in Chapter VII, Article 40, of the Charter in respect to breaches of the peace and acts of aggression, but where both proposals are distinct permanent mechanisms to meet new challenges of the times.

Notes

a/ A settlor, as defined in this Service, is one who induces a settlement between disputing parties, i.e., a negotiator, mediator, conciliator, good officer, or fact finder or some combination thereof which could also lead to one who makes a settlement, i.e., an arbitrator or a judge. The categories mentioned above comprising a settlor can all relate to a dispute settlement option as provided for under Article 33, paragraph 1, of the Charter of the United Nations.

b/ It is anticipated that such secretarial services will be drawn from the Office of Legal Affairs.

c/ The fund established by the Secretary-General for parties appearing before the International Court of Justice may, if considered appropriate, be put at the disposal of parties in dispute experiencing financial difficulties.